

## § 46.165

stored, so far as it may be necessary for the purpose of examining such products. When such premises are open at night, any appropriate ATF officer may enter them, while so open, in the performance of his official duties. The owner of such premises, or person having the superintendence of the same, who refuses to admit any appropriate ATF officer or permit him to examine such products shall be liable to the penalties prescribed by law for the offense. Operators of vending machines shall make the tobacco products in their machines available for inspection upon the request of any appropriate ATF officer.

(68A Stat. 872, 903; 26 U.S.C. 7342, 7606)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

## § 46.165 Interference with administration.

Whoever, corruptly or by force or threats of force, endeavors to hinder or obstruct the administration of this subpart, or endeavors to intimidate or impede any appropriate ATF officer acting in his official capacity, or forcibly rescues or attempts to rescue or causes to be rescued any property, after it has been duly seized for forfeiture to the United States in connection with a violation of the internal revenue laws, shall be liable to the penalties prescribed by law.

(68A Stat. 855; 26 U.S.C. 7212)

[T.D. 6573, 26 FR 8202, Aug. 31, 1961. Redesignated at 40 FR 16835, Apr. 15, 1975, as amended by T.D. ATF-472, Feb. 27, 2002]

## § 46.166 Dealing in tobacco products.

(a) All tobacco products purchased, received, possessed, offered for sale, sold or otherwise disposed of, by any dealer must be in proper packages which bear the mark or notice as prescribed in parts 270 and 275 of this chapter. Tobacco products may be sold, or offered for sale, at retail from such packages, provided the products remain in the packages until removed by the customer or in the presence of the customer. Where a vending machine is used, tobacco products must similarly

## 27 CFR Ch. I (4-1-04 Edition)

be vended in proper packages or directly from such packages.

(b) Tobacco products manufactured in the United States and labeled for exportation under chapter 52 of title 26, U.S.C. may not be sold or held for sale for domestic consumption in the United States unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label. This applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of such articles has been modified or altered by a person other than the original manufacturer so as to remove or conceal or attempt to remove or conceal (including by placement of a sticker over) the export label.

(c) For penalty and forfeiture provisions applicable to the selling, relanding or receipt of articles which have been labeled or shipped for exportation, see § 275.83 of this chapter.

[T.D. ATF-465, 66 FR 45618, Aug. 29, 2001]

## § 46.167 Liability to tax.

Any dealer who, with intent to defraud the United States, possesses tobacco products (a) upon which the tax has not been paid or determined in the manner and at the time prescribed in parts 40 and 275 of this chapter or (b) which, after removal without payment of tax pursuant to section 5704, I.R.C., and regulations issued thereunder, have been diverted from the applicable purpose or use specified in that section or (c) which are not put up in packages prescribed in parts 40 and 275 of this chapter or are put up in packages not bearing the marks and notices prescribed in such regulations shall be liable for a tax equal to the tax on such products.

(72 Stat. 1424; 26 U.S.C. 5751)

[T.D. 6871, 31 FR 60, Jan. 4, 1966. Redesignated at 40 FR 16835, Apr. 15, 1975 and amended by T.D. ATF-232, 51 FR 28092, Aug. 5, 1986; T.D. ATF-243, 51 FR 43194, Dec. 1, 1986; T.D. ATF-460, 66 FR 390 93, July 27, 2001]

## § 46.168 Liability to penalties and forfeitures.

Any dealer who fails to comply with the provisions of this subpart becomes

liable to the civil and criminal penalties, and forfeitures, provided by law.

(72 Stat. 1425, 1426; 26 U.S.C. 5761, 5762, and 5763)

### Subpart H [Reserved]

## Subpart I—Floor Stocks Tax on Cigarettes Held for Sale on January 1, 2000 and on January 1, 2002

AUTHORITY: Section 9302, Pub.L. 105-33, 111 Stat. 251, unless otherwise noted.

SOURCE: T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, unless otherwise noted.

### GENERAL

#### § 46.191 Purpose of this subpart.

The regulations in this subpart implement the floor stocks tax on cigarettes held for sale the first moment on January 1, 2000 and on January 1, 2002.

#### § 46.192 Terms used in this subpart.

(a) *Appropriate ATF officer.* An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this subpart by ATF Order 1130.28, Delegation of the Director's Authorities in parts 45 and 46.

(b) *Controlled group.* Pursuant to 26 U.S.C. 5061(e)(3), the term "controlled group" means a controlled group of corporations, as defined in 26 U.S.C. 1563, and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words "at least 80 percent" shall be replaced by the words "more than 50 percent" in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Controlled groups of corporations include, but are not limited to:

(1) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(2) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(3) Combined groups as defined in 26 CFR 1.1563-1(a)(4). Also, the rules for a controlled group of corporations apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more

than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all are members of a controlled group.

(c) *Foreign trade zone.* A foreign trade zone established and operated pursuant to the Act of June 18, 1934, as amended, 19 U.S.C. 81a.

(d) *Large cigarettes.* Cigarettes weighing more than three pounds per thousand.

(e) *Person.* When the term "person" is used in this subpart, it refers to an individual, partnership, association, company, corporation, a trust, or an estate. It also includes any State or political subdivision.

(f) *Small cigarettes.* Cigarettes weighing not more than three pounds per thousand.

(g) *Tax increase dates.* For the purposes of this floor stocks tax, the tax increase dates are January 1, 2000 and January 1, 2002.

[T.D. ATF-423, 64 FR 71958, Dec. 22, 1999, as amended by ATF-457, 66 FR 32220, June 14, 2001; T.D. ATF-472, 67 FR 8881, Feb. 27, 2002]

#### § 46.193 Floor stocks tax defined.

Floor stocks tax is a tax imposed on all Federally taxpaid or tax determined cigarettes held for sale on the first moment a tax increase becomes effective. The tax is the difference between the previous excise tax rate and the new tax rate.

#### § 46.194 Persons liable for this tax.

You are liable for this tax if you hold for sale any taxpaid or taxdetermined cigarettes at the moment a tax increase is effective. You are liable for floor stocks tax on cigarettes that you own that may be in transit (refer to §§ 46.207 and 46.208). You may also be liable if you hold cigarettes in a foreign trade zone (refer to § 46.209).

#### § 46.195 Persons not liable for this tax.

If you do not hold any taxpaid or taxdetermined cigarettes for sale at the moment a tax increase is effective, you are not liable for this tax.

#### § 46.196 Floor stocks requirements.

(a) *Take an inventory.* Establish the quantity of cigarettes subject to the